

**UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT**

No. 23-4207

UNITED STATES OF AMERICA

v.

TYZHEEM KWAZHON NIXON

**Petition for
Panel Rehearing**

The government files this petition to correct a factual error in its briefing. The government does not believe that the error affects the Court's reasoning or the outcome of the case and is not asking this Court to change its opinion.

The Assistant United States Attorney who drafted the government's response brief believed, based on her review of the appellate record, that Defendant had not been charged with any of the alleged weapons possession and assault incidents that occurred while Defendant was in federal custody pending his guilty plea and sentencing. J.A. 80, ¶ 9. In its brief, the government represented that Defendant was not charged in connection with those incidents. Response Brief at 4–5.

The AUSA later learned that Defendant had been charged by the United States Attorney's Office for the Eastern District of North Carolina with assault and weapons possession in connection with three of those incidents. *See United States v. Tyzheem Nixon*, No. 7:23-cr-00015-D-RJ (E.D.N.C. filed March 1, 2023). Although the office was aware that Defendant had been charged when the government's brief was filed, the assigned AUSA was not. That fact was not

part of the record in this appeal. The government apologizes for not catching and correcting the briefing error sooner.¹

The Court appeared to rely on this error in its opinion. Op. at 30–31 (“For reasons unknown, the government elected not to [charge Defendant]. Instead, the government sought to punish Nixon through sentencing for an unrelated offense, circumventing Nixon’s right to a jury trial and the heightened burdens of proof that come with new criminal proceedings.”). The government does not believe that the error affects this Court’s analysis or the outcome of the opinion. The government is not asking the Court to make any changes. The government nevertheless seeks to make the Court aware of the factual mistake in its briefing.

Respectfully submitted this 24th day of March, 2025.

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¹ The government contacted Defendant’s counsel to inform him about the error.

CERTIFICATE OF COMPLIANCE

1. Pursuant to Rule 32(g) of the Federal Rules of Appellate Procedure, I hereby certify that this document meets the type-volume limits of Rules 27(d), 35(b)(2), and/or 40(b) because, exclusive of the portions of the document exempted by Rule 32(f), this document contains 320^{*} words.

(Filings are not to exceed 5,200 words for a motion or response and 2,600 words for a reply, pursuant to Rule 27(d), or 3,900 words for a petition for panel rehearing or rehearing en banc, pursuant to Rules 35(b)(2) and/or 40(b)).

2. Further, this document complies with the typeface requirements of Rule 32(a)(5) and the type-style requirements of Rule 32(a)(6) because it has been prepared in Microsoft Word 2016 using fourteen-point *Calisto MT*, a proportional-width typeface.

/s/ Katherine S. Englander
KATHERINE S. ENGLANDER
Assistant United States Attorney

^{*} This word count includes the 249 words appearing in the reproduced discovery on pages 6 and 7.